

## EXCLUSIVE NEGOTIATION AGREEMENT Ventura and Seventh Mixed Use Project

CITY OF FRESNO  
City Clerk's Office (Original)

This EXCLUSIVE NEGOTIATION AGREEMENT (this "ENA") is dated as of August 17, 2010, and is entered between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic, organized and existing under the laws of the State of California, ("Agency"), the CITY OF FRESNO, a municipal corporation ("City"), and AMCAL MULTI-HOUSING, INC., a California corporation ("Developer"), on the terms, and subject to the conditions, set forth below. The Agency, City and Developer are sometimes referred herein collectively as the "Parties," and either individually as a "Party."

### RECITALS

A. The Agency and City desire to encourage and effectuate the redevelopment of certain parcels of real property, comprising a total of approximately 3.40+/- acres (collectively, the "Site"), on the south side of Ventura Street between Seventh and Eighth Streets in the City of Fresno (the "Site"). The Site is depicted on the "Study Area Map," attached to and incorporated in this Agreement as Exhibit A.

B. A portion of the Site, as designated on Exhibit A, lies within the Southeast Fresno Revitalization Project Area (the "Project Area"), and is subject to the Project Area's governing redevelopment plan (the "Redevelopment Plan"). The remaining portion of the Site is owned by the City and consists of 3 parcels, as designated on Exhibit A, and is not presently within the boundaries of the Project Area.

C. The parcels comprising the Site are owned by the Agency and City.

D. To the extent provided in or allowed by the Law including Cal. H.&S.C. Sections 33334.2 and 33449, as provided by joint resolutions of the Fresno City Council and the Agency, findings and determinations pursuant to Health and Safety Code Section 33334.2.(g), the Plan and limited to the terms and conditions therein, the Agency may make improvements upon and/or construct and improve structures in order to provide housing for persons and families of low- to moderate-income, including related on-site and off-site improvements, by variously (1) allowing the use of Housing Set Aside Funds outside the Airport Area Revitalization, Central Business District, Central City Commercial Revitalization, Chinatown Expanded, Convention Center, Freeway 99-Golden State Boulevard Corridor, Fruit/Church, Mariposa, Roeding Business Park, South Fresno Industrial Revitalization, South Van Ness Industrial, Southeast Fresno Revitalization, West Fresno I, West Fresno II, West Fresno III, redevelopment plans, (2) restricting the use of the Housing Set Aside Funds to certain of the Community Development Block Grant eligible areas of the City, (3) placing a



priority on the use of the Housing Set Aside Funds from certain Project Areas to be used either within or adjacent to the Central Area or adjacent to certain Project Areas.

E. The Developer proposes to develop the Site as a mixed use development comprised of senior affordable rental housing and commercial/retail that will meet the needs of the area's diverse population, and to negotiate with the Agency and City the terms of a Disposition and Development Agreement and HOME Program Agreement (the "DDA/HOME Agreement") to develop and operate the Project on the Site.

F. The City is a recipient of HOME Investment Partnerships Program (hereinafter referred to as "HOME Program") funding from the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD"), under the Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (hereinafter referred to as the "ACT") for eligible activities further establishing the national objectives to benefit its low- to moderate-income residents, in accordance with its 2006-2010 Consolidated Plan and Annual Action Plan, to increase, improve, and preserve the community's supply of low and moderate income housing available at affordable housing cost to persons and families of low- to moderate-income.

G. Subject to the Agency's compliance with Community Redevelopment Law ("CRL"), the Parties intend to negotiate mutually acceptable terms and conditions in the DDA that will define the Parties' rights, obligations and participation in developing and operating the Project on the Site.

H. On April 21, 2010, the Housing and Community Development Commission of the City of Fresno reviewed the proposed development and recommended it for approval. On April 22, 2010, the City Council and Agency Board in a Joint Meeting approved the DDA/HOME Agreement.

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, and subject to the terms and conditions and provisions hereof, the Parties agree as follows:

**1. Exclusive Good Faith Negotiations.** The Parties, during the Negotiation Period defined in Section 3 below, and only for so long as the Developer timely meets its obligations under this ENA, including without limitation the Performance Schedule in Exhibit "B", shall negotiate exclusively and in good faith regarding the proposed development and operation of the Project on the Site and the terms of the ENA. Good faith negotiations shall include, without limitation, attending scheduled meetings, directing staff and consultants to cooperate with the other Party to the extent reasonably practicable and necessary to negotiations, providing information reasonably available to the Party and necessary to negotiations, and promptly reviewing and returning any comments on correspondence, reports, agreements or other documents received from the other Party.



2. **Development Concept/Scope.** The negotiations under this ENA will be based on a development concept including components described in Recitals "D" and "F" above.

3. **Negotiation Period.** The Parties will negotiate for 12 months (365 calendar days) from the date that the Agency and City execute this Agreement (the "Negotiation Period"), unless negotiations are terminated sooner as provided herein. When the Negotiation Period expires, this Agreement shall automatically terminate unless either:

(a) (i) before expiration of the Negotiation Period, the Developer shall prepare and deliver a status report to the Agency's Executive Director, for submittal to the Agency's Board of Directors (the "Agency Board") and the City Council (the "Council"), (A) demonstrating to the Executive Director's satisfaction that the Developer is then in material compliance with this Agreement, and that the Developer has made and is then making good faith efforts to timely complete all its obligations under the Performance Schedule, (B) explaining why the Developer has been unable to complete its obligations under the Performance Schedule, despite such good faith efforts, and (C) containing a proposed amended Performance Schedule, (ii) the Agency Board and City Council approve the extension and amended Performance Schedule, and (iii) the Developer and the Agency and the City execute an amendment to this Agreement to implement extending the Negotiation Period and amending the Performance Schedule; or

(b) (i) before expiration of the Negotiation Period, the Developer and the Agency Executive Director and the City Planning and Development Director/designee have submitted proposed DDA/HOME Agreement terms and a Project scope, sufficient to begin a National Environmental Policy Act ("NEPA") and California Environmental Quality Act ("CEQA") environmental review to the Agency Board and the Council, (ii) the Agency Board and the Council directed staff to negotiate the final DDA/HOME Agreement, to take all steps necessary to comply with NEPA and CEQA and to prepare and process any plan amendments, (iii) and the Agency Board and City Council extend the Negotiation Period to the later of one year from the date of direction or 30 days after completing the environmental assessment process that complies with NEPA and CEQA.

(c) If, on expiration of the Negotiation Period, including any extensions, the Agency Board and the Council have not made the requisite findings and approved a DDA/HOME Agreement that the Parties timely execute, then this ENA shall automatically terminate unless the Council and Agency Board have approved, and the Developer and the Agency and City have entered, a written extension ENA that includes an updated Performance Schedule. On termination of this ENA, the Agency and City thereafter may deal with the Site and negotiate with others concerning the Site as the Agency, in its sole and absolute discretion, may determine.

Notwithstanding the foregoing, any Party may terminate this ENA for cause in the event another Party is in default of this Agreement for failure to negotiate in good faith. Any substantive breach of this ENA shall constitute a failure to negotiate in good faith. No Party shall terminate this ENA unless the Party seeking to terminate has first



provided written notice of its intent to terminate the ENA to the other Parties, specifying the cause, and the non-performing party(ies) fail(s) to cure the default or other cause within thirty (30) days after receipt of such notice. The Agency/City or Developer may terminate this Agreement for cause upon thirty (30) days written notice if the terminating parties determines, in its sole discretion, that the development of the site is financially infeasible. In the event this ENA is terminated, in accordance with this paragraph, no Party shall have any further rights, obligations, or liability to the other Party as the result of this ENA.

**4. Performance Schedule.** In addition to their respective obligations specified in this ENA, the Developer and the Agency and the City shall timely complete each of their respective activities or tasks set forth in the Performance Schedule, attached to and incorporated in this ENA as Exhibit "B".

**5. Meetings.** Within 10 days after the Effective Date, the Parties shall jointly prepare a meeting schedule that anticipates accomplishing the timely performance of those activities and tasks set forth in the Performance Schedule (Exhibit "B"). Agency, Developer and City staff, as needed, shall meet or hold a conference call on average every two weeks to discuss the status of the activities and tasks in the Performance Schedule, the accomplishment of such activities and tasks and other matters related to the negotiations and the Project.

**6. Proposed Terms and Conditions for DDA/HOME Agreement.** During the Negotiation Period, including any extensions, the Parties shall negotiate the proposed terms for the DDA/HOME Agreement. The DDA/HOME Agreement will detail the Parties' respective rights and obligations for developing and operating the Project on the Site, and should include at a minimum, without limitation, terms and conditions on the following:

- 6.1. Project design;
- 6.2. The Developer's participating and cooperating with the Agency and City in planning the development of the Site, subject to compliance with all applicable ordinances, requirements, rules, regulations and policies of the Agency, the City, and the U.S. Department of Housing and urban Development (HUD), including, but not limited to, applicable zoning ordinances, requirements, rules, regulations, and policies, as from time to time amended;
- 6.3. The Developer's sole obligation and cost for determining whether the Site or any part thereof is suitable for the Project, including preliminary investigations of surface and subsurface conditions (including, without limitation, environmental contamination), that the Developer may deem reasonably necessary or appropriate for determining suitability;



- 6.4. Agency and City obligations and powers, if any, to obtain for the Developer access to properties in the Site and the right to perform due diligence investigation and tests;
- 6.5. The covenants, conditions and restrictions on the Site and the Project, or any part of either, including without limitation use, maintenance, construction, powers of termination, reentry and reverter, and the rights and restrictions of tenants and/or owners;
- 6.6. Signage for the Project;
- 6.7. Economic development standards for the Project;
- 6.8. Restrictions on the Developer's rights to assign or otherwise transfer any rights and obligations under the DDA/HOME Agreement or any property that the Agency/City may convey to the Developer;
- 6.9. The Developer's completion guaranty for its obligations under the DDA/HOME Agreement;
- 6.10. City insurance requirements and Developer's indemnification of the Agency, the City and the representatives, officers and employees of the Agency and the City regarding the Site, the Project and the Developer's obligations and performance under the DDA/HOME Agreement;
- 6.11. Agency/City obligations, if any, relating to the Project and its development;
- 6.12. The purchase price and/or other consideration to be paid by the Developer for the Site. Such purchase price and/or other consideration will be based on such factors as market conditions, density of development, costs of development, risks of the Agency and City, risks of the Developer, estimated or actual Developer profit, public purpose and/or fair market or reuse value for uses permitted to be developed and financial requirements of the Agency/City, and will be subject to approval by the Agency and the Council after a public hearing as required by law.
- 6.13. Responsibilities for communication with media outlets and coordination of ground breaking and grand opening activities.
- 6.14. Labor compliance
- 6.15. Community outreach
- 6.16. Rental restrictions required by the City, Agency, and HUD.
- 6.17. Subordination of City and Agency's rental restriction covenants, density bonus agreements, deeds of trust, etc. to (conventional) senior construction and permanent lenders.

The terms and conditions set forth in this Section 6 are representative and not exhaustive. The Parties do not intend for this ENA to create any legally binding obligations regarding the DDA/HOME Agreement. Execution of this ENA by the Agency/City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof. For any DDA/HOME Agreement or its terms to be enforceable, it must be contained in a final writing, must be approved by the Agency Board and the City Council after complying with all applicable laws, and must be executed by and delivered to each Party.

**7. Developer's Principals and Legal Status.** The Developer shall disclose such information to the Agency/City regarding its principals, legal status, and financial capabilities and project experience as the Agency/City may reasonably request. At a minimum, the Developer shall disclose the following: (a) its principals, shareholders, members and/or partners, (b) its directors, officers, and key employees, (c) its parent company, subsidiaries and affiliates, if any, and (d) all other pertinent information concerning the Developer and its legal structure.

Without limiting the generality of the preceding paragraph, the Developer represents the following concerning the Developer as of the Effective Date:

7.1 The Developer is a California Corporation.

7.2 The principal office of the Developer is:

30141 Agoura Road, Suite 100  
Agoura Hills, CA 91301

7.3 The principal members of the Developer are:

Percy Vaz, Chief Executive Officer

7.4 The Developer's architect will be:

The Vincent Company, Architects, Inc.,  
1500 W. Shaw Avenue, Suite 304  
Fresno, CA 93711.

The Developer will be solely responsible for selecting/retaining/paying all additional design consultants, which may include: structural engineers, mechanical engineers, electrical engineers, civil engineers, landscape architect, etc.

The Developer will give the Agency/City at least 10 days' prior notice of any change in the above information during the term of this ENA. Any change in the principal members, managers, consultants, or professionals of the Developer will be subject to the written approval of the Agency/City



**8. Financial and Other Information.** The Developer shall promptly provide the Agency/City any financial information that the Agency/City may reasonably request, including without limitation a true, correct and complete copy of its most recent CPA reviewed financial statement. The Developer shall promptly provide the Agency/City with other information, data, and commitments that the Agency/City may reasonably request to ascertain the Developer's financial and performance capabilities to expeditiously complete the Project on the Site. In any event, no later than 180 days before end of the Negotiation Period, including any extension thereof, the Developer shall submit to the Agency/City, in reasonable detail, the Developer's proposed construction financing for development of the Project and proposed permanent financing for the Project.

The Developer will specifically identify any such information that is proprietary. To the extent permitted by law, the Agency/City will use best efforts to maintain the confidentiality of such Developer-identified information consistent with controlling law and order(s) of court(s) of competent jurisdiction, but will have no liability if, despite its best efforts, any Developer-identified information is disclosed. Notwithstanding the preceding sentence, the Agency/City may disclose such Developer-identified information to City or Agency representatives, consultants, employees and officers in connection with the Project, and the Agency or City shall disclose such information as any court or other authoritative body may direct or order.

**9. Assignment Prohibited.** The Developer may not assign or otherwise transfer any of its rights or obligations under this ENA without the express written consent of the Agency and City. The Agency and City may give or deny consent in its sole and absolute discretion. Notwithstanding the foregoing, with written notice to the Agency Executive Director, Housing Manager and with Agency Board and City Council knowledge and approval, the Developer may join in and associate with another entity in a joint venture, partnership or other legal arrangement for the purpose of developing the Site, provided (i) the Developer retains management and control of such entity, (ii) such entity has assets, financial capability and development experience acceptable to the Agency/City, (iii) the Developer first submits to the Agency Board and City Council a report and substantiating evidence of the Developer's majority control and the entity's assets, financial capability and development experience, and (iv) the Developer remains fully responsible to the Agency/City for performance of all obligations under this Agreement.

Upon any permitted assignment or transfer hereunder, the Developer and the assignee/transferee shall execute and deliver to the Agency/City such documentation as the Agency/City may require. When the Agency/City accepts the assignment or transfer and receives all such documentation, the assignee/transferee shall thereafter be the "Developer" under this Agreement for all purposes.

#### **10. Plans, Reports, Studies and Investigations.**

**10.1. Copies to Agency.** On request by the Agency or City, and at no cost to the Agency or City, the Developer shall promptly give the Agency or City



copies of all plans, reports, studies and investigations (collectively, the "Plans," individually a "Plan") respecting the Site and the Project that the Developer prepares or causes to be prepared. Plans may include, without limitation, marketing studies or plans, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, in writing or by any other medium or media. For all parts of the Project that are subject to a DDA/HOME Agreement with the Developer, the Developer shall indemnify, defend, and hold the Agency, the City and Agency and City representatives, officials, officers, and employees harmless from any losses, liabilities, claims, causes of action, injuries or expenses including, without limitation, reasonable attorneys' fees and costs, arising from, relating to or in any way connected with the Plans, or the preparation thereof, or the use thereof without modification, for the Project. This indemnity shall not apply where, as described in paragraph 10.3, the Agency/City or a transferee thereof uses a Plan, in any form, for another project, or for this Project with a developer other than the Developer.

**10.2. Proprietary Rights.** If this ENA terminates for any reason without an executed DDA/HOME Agreement with the Developer, the Agency/City may retain all duplicate copies of Plans in its possession and may demand duplicate copies of other Plans completed or partially completed and not yet delivered. On such Agency or City demand, the Developer shall deliver to the Agency/City such duplicate copies of all Plans not yet in Agency/City possession, including, without limitation, partially completed Plans. If, at the time of the Agency/City demand, the Agency/City wants any partially completed Plan to be completed, the Agency/City shall pay the costs to complete such Plan (but not the costs that the Developer already owes or has already incurred or that would be payable whether or not the Plan is completed). Upon completion, the Developer shall deliver the original of such completed Plan to the Agency/City and shall transfer to the Agency/City, without cost to the Agency/City, all right, title, interest and ownership rights that the Developer has or may have to such completed Plan, if any, and will notify the Agency/City of known third party rights, if any, in the completed Plan such as copyright, trademark or other use limitations retained by persons other than the Developer. On request by the Agency/City, the Developer, at no cost to the Developer, will cooperate with and assist the Agency/City to obtain any third party rights that may be necessary for the Agency/City to use the completed Plan.

**10.3. Use of Plans.** All duplicate copies of Plans, and all original Plans completed at Agency/City expense, retained by or delivered to the Agency/City pursuant to Paragraph 10.2 will belong to the Agency and City and (subject to acquiring any third party rights in any completed original Plan) may be used by the Agency/City for any purpose as it may deem advisable, including but not limited to completion of the Project or other project(s) on the Site if this Agreement is terminated as a result of



the Developer's default. Any Agency or City use or Agency or City transferee's use of any duplicate copy of a Plan in completed or uncompleted form or any original Plan completed at Agency/City expense for other projects, or for this Project with a developer other than the Developer, will be at the Agency/City's risk and without liability or legal exposure to the Developer, including actions from third parties. This section only refers to the use of plans by the City/Agency or a third party pursuant to Paragraph 10.2 of this Agreement, arising from a default of this Agreement, and does not refer to any use of plans that would occur after the adoption of a DDA with the Developer or during the actual construction of the Project; such use of plans or completion of a partially constructed Project would be subject to terms contained in the DDA and is beyond the scope of this Agreement.

**11. Additional Developer Responsibilities.** Without limiting any other provision of this ENA or the Developer tasks and actions required in the Performance Schedule, the Developer shall, during the Negotiation Period, including any extension thereof, do the following at its sole cost and expense in furtherance of the negotiation process:

- 11.1. Meetings.** The Developer shall meet with Agency and City representatives to review and understand the planning and design criteria applicable to the Site, and developing Site plan alternatives and physical design concepts in accordance with the Performance Schedule (Exhibit "B").
- 11.2. Reports.** Normally but not more frequently than monthly, but at any time requested by the Agency Board/City Council, Developer shall make oral and written progress reports advising the Agency and City and/or its staff on all progress being made on tasks and other activities undertaken by the Developer pursuant to this ENA and/or the Developer's proposed methods of financing acquisition of the Site and development of the Project.
- 11.3. Financial Status.** On request by the Agency and City from time to time, the Developer shall demonstrate its financial capacity and ability to timely and satisfactorily perform its obligations under this ENA.
- 11.4. Development Team.** Promptly on any change in a development team member that Developer has identified in Section 8 above or pursuant to Exhibit "B", the Developer shall notify the Agency and City in writing and identify the new team member.
- 11.5. Rights of Entry.** Before entering upon any property within the Site, whether for site assessment or other due diligence, the Developer shall first obtain a right of entry from the City/Agency and any tenant or occupant. The Developer may ask the Agency and City to use best efforts to help the Developer obtain a right of entry upon private property. The



right of entry shall be in form and content reasonably acceptable to the Agency/City including any required insurance/indemnity provisions, and any private property owner.

- 11.6. **Professional Services Costs; Deposit.** It is the understanding of the Parties that the Developer shall be responsible for hiring and paying all consultants on the Project related to design, engineering, planning, structural analysis, historic preservation, economic feasibility and absorption, the Low Income Housing Tax Credit application process, marketing, community outreach, and property management. Notwithstanding the foregoing, unless otherwise agreed in writing, and except for Agency/City costs for any redevelopment plan amendments, the Developer shall be solely responsible for, and shall pay or reimburse all amounts payable under any agreement, for third party professional or consulting services that the Agency/City enters relating to the Project ("Consultant/Services Agreement") including, without limitation, its own building and/or historic surveys. Before the Agency or City enters into any Consultant/Services Agreement, the Developer, as set forth in the Performance Schedule, shall initially deposit with the Agency/City cash, or cash equivalent acceptable to the Agency/City, equal to 50 percent of the estimated costs or proposed compensation under the Consultant/Services Agreement. The Agency or City will place each deposit in an interest bearing account. The Developer's failure to deliver a deposit, or to maintain the deposit as the Agency and City may determine, shall be a default of this Agreement.

Before entering a Consultant/Services Agreement, the cost of which is the responsibility of the Developer, the Agency and City will notify the Developer of its intent to enter the agreement for the Developer's account, with the name of the intended consultant/services provider and a copy of the proposed scope of work and compensation. The Developer will be entitled to object to only (i) the proposed compensation amount, and (ii) those factors in the scope of work that affect the amount of compensation (collectively, the "Compensation/ Factors"). The Developer has no right to object to or approve other provisions of the Consultant/Services Agreement, including without limitation the selection of the particular consultant/services provider. Not later than 10 business days after delivery, the Developer will notify the Agency and City in writing of any objections to the Compensation/ Factors. The Developer's failure to deliver written objection will be deemed approval of the Compensation/ Factors. If the Developer delivers any objection to the Compensation/ Factors, the Parties will in good faith negotiate for not more than 10 business days. Unless otherwise agreed in writing, if the Parties do not resolve any such objections within the 10 business days, either Party may terminate this Agreement by written notice to the other and no Parties shall have any further rights, obligations, or liability to the other Party as



the result of this Agreement, other than financial obligations then due and owing.

The Developer authorizes the Agency and City to use or draw on the deposit to pay the actual amounts payable under any Consultant/Services Agreement. The Developer shall maintain the deposit so that funds are available for the Agency and City to timely pay amounts under any Consultant/Services Agreement as such amounts become due and payable. The Developer shall supplement the deposit within 10 business days after receiving a written request from the Agency and City specifying the amount needed under Consultant/Services Agreement/s.

At expiration of the Negotiation Period, including any extension thereof, or any earlier termination of this Agreement, if the Developer has continued to negotiate in good faith, within 10 days after receiving the Developer's written demand, the Agency and City shall return to the Developer any remaining unexpended and unencumbered deposit amount, including any accrued and unexpended interest, less any costs owing under outstanding Consultant/Services Agreement(s).

The term "business day" as used in this ENA means any day other than (i) a Saturday or Sunday (ii) a day on which commercial banks in California are authorized or required by law to close, or (iii) a day on which the Agency/City is authorized to remain closed. Any other reference to "day" in this Agreement means a calendar day.

**11.7. Environmental Reports/Studies.** The Developer shall promptly provide the Agency and City with copies of any environmental reports and any other studies which the Developer prepares, causes to be prepared or otherwise obtains with respect to the Site or the Project.

**11.8. Ventura and Seventh Footprint.** As additional consideration for the exclusive negotiating rights provided under this ENA, even if the Parties do not successfully negotiate and enter into a DDA/HOME Agreement in accordance with this ENA, before the expiration of the Negotiation Period, the Developer shall deliver to the Agency/City a conceptual site plan showing footprints of buildings and facilities for a "Ventura and Seventh" development proposed by the Developer for a portion of the Site.

**12. Agency and City Responsibilities.** In addition to those items designated as Agency/City Responsibilities in the Performance Schedule (Exhibit "B"), the Agency and City, during the Negotiation Period, including any extension thereof, in furtherance of the negotiation process the Agency/City will cooperate and assist the Developer, as needed, in fulfilling Developer obligations under the Performance Schedule.



**13. DDA and Compliance with Laws.** If the negotiations result in a proposed DDA/HOME Agreement, Agency Board and City Council approval thereof may occur only after compliance with all applicable laws and ordinances including, without limitation, the CRL, HUD requirements, and CEQA and NEPA, as applicable. The DDA/HOME Agreement shall contain by reference the design and site plan of the Project; such design shall be part of the Project approval and must be approved by the Agency Board and City Council with the DDA/HOME Agreement. Any DDA/HOME Agreement shall become effective only if and after the DDA/HOME Agreement has been considered and approved by the Agency Board and City Council at a public hearing called for such purpose.

**14. NEPA and CEQA.** An objective during the Negotiation Period, as provided in the Performance Schedule, is to establish a Project scope and description sufficient to include in a NEPA and CEQA review. The Developer shall contact Krazan & Associates to revise the initial NEPA/CEQA prepared for the acquisition of the property. The Agency and City will consult with the Developer regarding the cumulative impact, and on any mitigation issues, mitigation measures and the responsibility therefor.

The Developer shall be solely responsible for the costs of NEPA/CEQA compliance for the Project. If an Environmental Impact Report(s) under CEQA or Environmental Impact Statement(s) under NEPA is determined to be necessary to the project, the Developer may determine that the project is financially infeasible under Section 3 of this Agreement. Alternatively, the Parties may discuss alternatives to terminating the Agreement based on the cost of an EIR/EIS.

The Developer shall cooperate with the Agency and City and its CEQA consultant in preparation of the environmental documents by, among other things, timely supplying necessary technical data and other related information and/or development plans concerning the Project.

**15. Brokers.** Neither the Agency/ City, nor the Developer will be liable for any real estate commissions, finder's fees or brokerage fees arising from, relating to or in any way connected with the transactions contemplated by this ENA. The Agency/City and Developer represent and warrant to each other that it has not engaged any broker, agent or finder in connection with such transactions. The Agency/City and Developer shall indemnify, defend and hold each other and their representatives, officials, employees and officers harmless from and against any losses and liabilities, including without limitation reasonable attorneys' fees, arising from, relating to or in any way connected with any claim by any broker, agent or finder for any commission, fee or other compensation in connection with such transactions or any breach of such representation and warranty by the Agency/City or Developer.

**16. Entire Agreement; Attorneys' Fees; Time is of the Essence; Counterparts.** This ENA is the entire ENA agreement as understood by the Parties with respect to the matters set forth herein. This ENA may be amended only in a writing signed by all Parties, and approved by the Agency Board and City Council. If a Party brings an action or files a proceeding in connection with the enforcement of its respective rights or



as a consequence of any breach by the other Party, then the prevailing Party(ies) in such action or proceeding shall be entitled to have its reasonable attorneys' fees and costs and other out-of-pocket expenditures paid by the losing Party. Time is of the essence in this ENA. This ENA is the product of negotiation and all Parties are equally responsible for authorship of this ENA. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement. Each individual executing this ENA represents and warrants they are duly authorized to execute and deliver this ENA on behalf of the Party named herein and this ENA is binding upon said party in accordance with its terms. This ENA may be executed in counterparts.

**17. Nondiscrimination.** The Developer covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code (race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, ancestry, age or any other basis prohibited by California Civil Code § 51), as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees of the Site.

**18. Notices.** All notices required or permitted hereunder shall be delivered in person or by facsimile, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to such Party at its address shown below, or to any other place designated in writing by such Party:

Agency: Executive Director  
Redevelopment Agency of the City of Fresno  
2344 Tulare Street, Suite 200  
Fresno, CA 93721

City: Manager  
Housing and Community Development Division  
City of Fresno  
2600 Fresno St., Room 3070  
Fresno, CA 93721-3605

Developer: Arjun Nagarkatti, President  
AMCAL Multi-Housing, Inc.  
30141 Agoura Road, Suite 100  
Agoura Hills, CA 91301

With a copy to: Kyle Arndt, Esq.



Bocarsley, Emden, Cowan, Esmail & Arndt, LLP  
633 West Fifth Street, 70<sup>th</sup> Floor  
Los Angeles, CA 90071

Notice shall be deemed received on delivery, if delivered personally or by facsimile; one day after delivery to the courier if delivered by courier; or three days after deposit into the United States mail if delivered by registered or certified mail.

**19. Agreement Limitations.** The Agency and City are not, by entering this ENA, committing themselves to or agreeing to undertake: (a) land acquisition, (b) land disposition to the Developer, (c) funding commitments, or (d) any other act or activities requiring the subsequent independent exercise of discretion by the Agency, the City or any agency or department thereof. This ENA does not constitute an agreement by the Agency or the City to exercise control over the Project within the Site. This ENA is merely an agreement to enter exclusive negotiations with respect to the Site according to the terms hereof, with all final discretion and approval remaining with the Agency Board and the City Council as to any DDA/HOME Agreement and all proceedings and decisions in connection therewith.

**20. Miscellaneous provisions.**

- 20.1. **Governing Law and Venue.** California law governs this ENA. The provisions of this ENA will be construed, and the rights and duties (procedural and substantive) of the Parties hereunder will be determined, according to California laws. Venue for filing any action to enforce or interpret this Agreement will be Fresno, California.
- 20.2. **Headings.** The section headings in this ENA are for convenience only; they do not explain, modify or add to the meaning of this ENA.
- 20.3. **Severability.** The provisions of this ENA are severable. The invalidity or unenforceability of any provision in this ENA will not affect the other provisions.
- 20.4. **Interpretation.** This ENA is the result of the combined efforts of the Parties. If any provision is found ambiguous, the ambiguity will not be resolved by construing this ENA in favor of or against either Party, but by construing the terms according to their generally accepted meaning.
- 20.5. **Precedence of Documents.** If the body of this ENA and any Exhibit or attachment conflict, the terms in the body of this ENA will control. Any term or condition in any Exhibit or attachment that purports to modify the allocation of risk between the Parties is void.
- 20.6. **Successors and Assigns.** Subject to the limitation on assignment in Section 9, this ENA is binding on and will inure to the benefit of the Parties and their respective successors and assigns.



- 20.7. **Counterparts.** The Parties may sign this ENA in counterparts, each of which when signed and delivered will be deemed an original, and all of which together will constitute one instrument.
- 20.8. **Effective Date.** The Effective Date of this ENA shall be the date that all Parties have duly executed this ENA, following Agency and City Council approval.
- 20.9. **Independent Capacity.** The Agency/City shall not become or be deemed a partner or joint venturer with Developer or associate in any such relations with Developer by reason of the provisions of this ENA. Developer shall not for any purpose be considered an agent, officer or employee of the Agency/City.
- 20.10. **Conflict of Interest.** No officer or employee of the Agency/City shall hold any interest in this Agreement (California Government Code Section 1090.)

\* \* \* \*

Remainder of Page Left Blank Intentionally;

Signatures on Next Page.



Each Party acknowledges that this Agreement has been executed by its duly authorized representative(s) on the date.

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

A public body, corporate and politic

By: Marlene Myler  
Title: EXECUTIVE Director

Dated: August 13, 2010

CITY:

CITY OF FRESNO

A California Municipal Corporation

By: [Signature]  
Title: Assistant City manager  
Dated: 8/17/10, 2010

DEVELOPER:

AMCAL Multi-Housing, Inc. A California Corporation

By: [Signature]  
Title: President

Dated: August 13, 2010

ATTEST:  
REBECCA KLISCH

APPROVED AS TO FORM:  
JAMES C. SANCHEZ

City Clerk and Ex Officio Clerk of the Agency

City Attorney and Ex Officio Attorney

By: Cindy Bruer 8/17/10  
Deputy

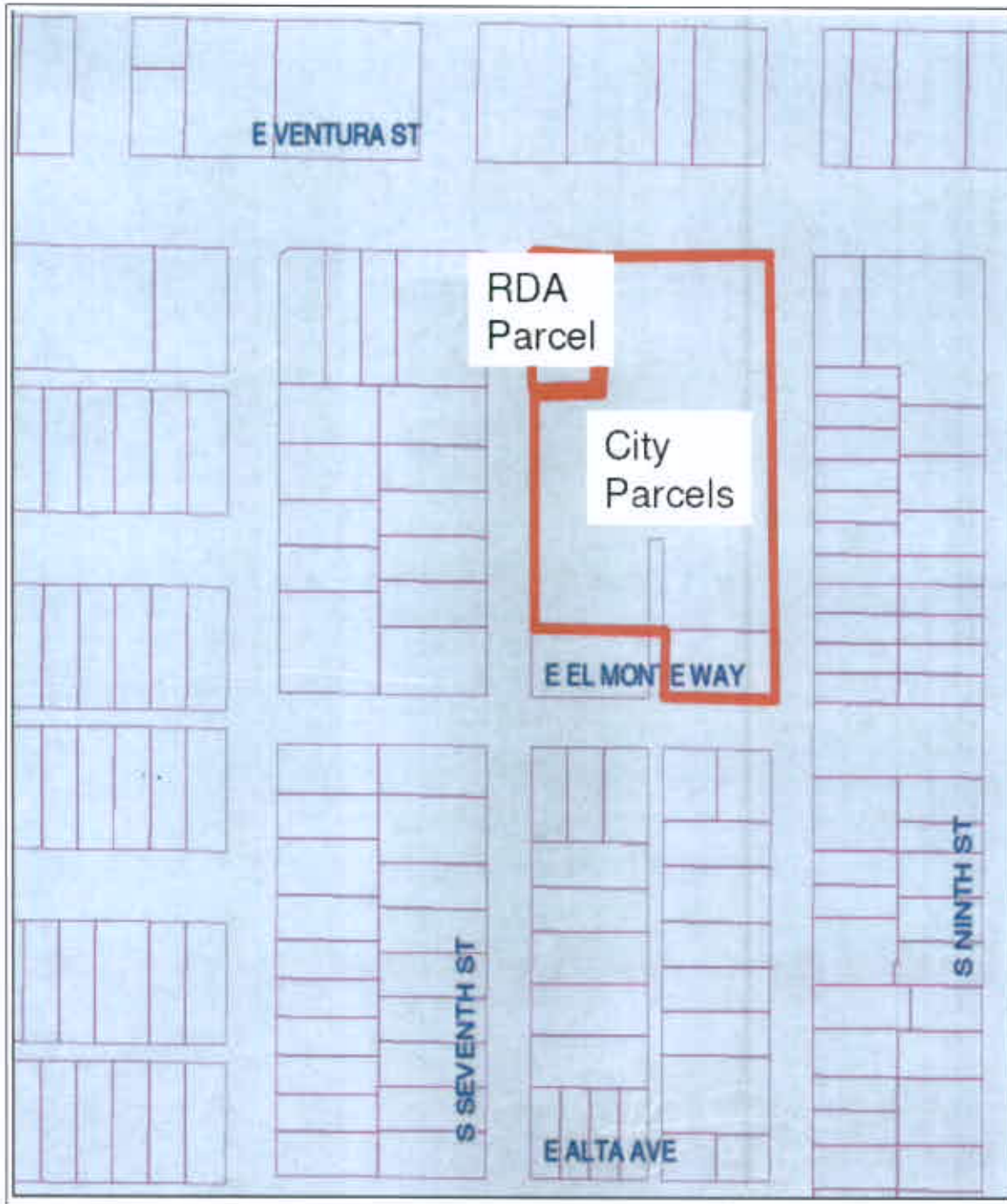
By: [Signature]  
Deputy BRIDLEY

Attachments:

Exhibit A: Study Area Map  
Exhibit B: Performance Schedule



Exhibit A  
Study Area Map





## Exhibit B

### Performance Schedule

**Developer Responsibilities.** During the Negotiation Period, and without limiting any other provision of this ENA, the Developer shall complete the following tasks, at its sole cost and expense, in furtherance of the negotiation process, by the times stated. The times stated shall run from the Effective Date of this ENA. If the Parties enter an agreement extending the Negotiation Period and updating this Performance Schedule, the amendment and updated Performance Schedule will supersede this Performance Schedule.

1. To the extent not already identified in Section 7, identify in writing to the Agency and City the names of the Developer's decision makers and its lead negotiators, the decision-making authority for each such person and the decisions that must be made by the Developer's governing body; the names of its design consultants, market consultants, architect, engineer, financial consultant (if any), legal counsel, building contractor, building management company and any other development team members. (Days 1 - 30)
2. Prepare and submit a phasing, ownership, and operations plan for all phases. (Days 1-30)
3. Prepare, for Agency/City staff review and comment, a conceptual development plan for the Site, indicating general land use designations, intensities and similar information, sufficient to determine the entitlement track necessary. (Days 1 -30)
4. Prepare a schematic plan to include number, type and proposed location of residential units, square footage and proposed location of the retail, resident services, site amenities, and number, type and proposed location of parking spaces. (Days 1 - 30)
5. Prepare and submit all necessary entitlement applications defined in the process per Agency/City responsibility in Section 4 above. (Days 120-180)
6. Prepare a Project economic model to include development costs, income, supportable investment and public revenues expected to be generated by the Project. It is understood that the Developer will seek a welfare tax exemption. The economic model will be presented in sufficient detail to enable the Agency/City to estimate all public revenues to be generated by the Project and evaluate the economic feasibility of the proposed Project. (Days 90 - 120)



7. Submit a financial plan for the Project, including a statement of overall construction costs, source and availability of equity capital, construction and permanent financing, and the scope and type of proposed Agency/City investment the Developer deems necessary. (Days 120 - 150)
8. Prepare and submit to the Agency/City evidence of market support for the Project components. Such evidence may include a market study, letters of tenant interest or other market data to allow the Agency/City to reach conclusions as to the market interest for the Project. (Days 120-150)
9. Submit to the Agency/City proposed DDA/HOME Agreement deal points, a general development plan, the economic parameters of the development, and a Project scope description, including any proposed phases thereof. The proposed DDA/HOME Agreement deal points shall be consistent with the minimum DDA/HOEM Agreement deal points set forth in the ENA, and shall include a Project development and implementation schedule. (Days 150 -180)
10. Subject to its objection rights, Deposit 50% percent of the estimated costs for each Consultant/Services Agreement before the Agency/City enters the Agreement(s), fund entitlement application fees, permits and CEQA document fees to proceed with finalizing the DDA/HOME Agreement and proceeding with entitlement and CEQA review of the Project. (Within Negotiation Period, including any extension)
11. Complete the revision of NEPA/CEQA. (Days 120 -150)
12. Complete negotiation of DDA/HOME Agreement. (Within Negotiation Period, including any extension)



**Agency and City Responsibilities.** During the Negotiation Period, and without limiting any other provision of this ENA, the Agency and City shall complete and/or work to complete the following tasks, all in furtherance of the negotiation process, by the times stated. Unless otherwise indicated, all costs shall be the responsibility of the Developer. The times stated shall run from the Effective Date of this ENA. If the Agency/City and the Developer enter an agreement extending the Negotiation Period and updating the Performance Schedule, the updated Performance Schedule shall supersede this Performance Schedule.

1. Provide the Developer with an inventory of existing public infrastructure and its locations, condition and capacity (Agency/City cost, unless otherwise agreed in writing). (Days 1 - 45)
2. Provide, or assist the Developer in obtaining, available and existing public records such as, plans, studies, reports and documents relating to the Site. Such information may include, without limitation, EIRs, the General Plan, utility plans, architectural historic surveys, specific plans, soils reports, zoning, the Redevelopment Plan, owner participation rules, any Agency adopted policies, and other information that may assist the Developer in evaluating the Site and the Project. (Days 1 - 45)
3. Conduct a review of the Redevelopment Plan to determine possible amendments, e.g., land use and land assembly, timing to adopt any amendments, and financial impacts thereof relative to the proposed Project (Agency cost). (Days 1 - 60)
4. Cooperate with and assist Developer in determining a description and timeline for the entitlement track likely to be necessary to enable the project to proceed in the timeliest manner. (Days 1 - 30)
5. Hire appropriate professional services, as needed, to conduct a complete building survey of the Site to determine the extent and nature of serious building and health and safety code violations (at Developer cost under any Consultant Services Agreement, or shared costs as the Parties may agree in writing). (Days 30 - 90)
6. Provide final requirements to the Developer as to the rental restrictions required by the City and Agency. (Days 1 - 60)
7. Cooperate with and assist Developer with any Historical Preservation meetings or requirements likely to be necessary to enable the project to proceed in the timeliest manner. (Days 1-150)



8. If and as directed by the Agency Board and Council, prepare an initial study to determine the type and scope of environmental assessment necessary for the Project (at Developer cost under any Consultant/Services Agreement). (Days 30-120)
9. Cooperate with and assist Developer in determining the land disposition schedule and method for the 3 parcels. (30-120)
10. Cooperate with and assist Developer in determining the demolition schedule and method for the 2 City owned parcels. (30-120)
11. Pay for any redevelopment plan amendments that the Agency may determine appropriate, solely from annually allocated and available funds. (Following submission of the DDA/HOME Agreement deal points and other information to the Council and the Agency Board, and direction to proceed with any such plan amendments)





**REPORT TO THE CITY COUNCIL  
AND REDEVELOPMENT AGENCY BOARD**

AGENDA ITEM NO. 1:30pm #2 C  
BOARD MEETING: 4/22/10

APPROVED BY

EXECUTIVE DIRECTOR

Presented to Fresno Redevelopment Agency

Date 4/22/10

Disposition rec. approved

**DATE:** April 22, 2010

**FROM:** MARLENE MURPHEY, Executive Director

**SUBJECT:** Approve an Exclusive Negotiation Agreement (ENA) between the Redevelopment Agency of the City of Fresno (the "Agency"), the City of Fresno ("City") and AMCAL Multi-Housing, Inc. a California corporation (the "Developer"), for a mixed-use development on 3.40 acres at Ventura Street between 7<sup>th</sup> and 8<sup>th</sup> Streets (470-052-01, 470-052-02 and 470-052-03), in and adjacent to the Southeast Fresno Redevelopment Project Area.

**EXECUTIVE SUMMARY**

Agency and City Housing and Community Development Staff recommend the City Council and Agency Board approve the attached ENA between the Agency, the City and Developer, for a mixed-use development on 3.40 acres at Ventura Street between 7<sup>th</sup> and 8<sup>th</sup> Streets (470-052-01, 470-052-02 and 470-052-03), in and adjacent to the Southeast Fresno Redevelopment Project Area. Two of the properties comprising the site are a former Fresno Unified School District maintenance facility of 2.85 acres (470-052-02) and a single family home parcel at 3745 E. El Monte Way of .26 acres (470-052-03) acquired by the City of Fresno in 2007 and 2008. The Agency acquired the site at the corner of Ventura and 7<sup>th</sup> Street (470-052-01) in late 2007.

The RFP was released in January, 2010 and responses were due in March. An evaluation panel of City and Agency housing staff reviewed the five submissions and created a short list of three firms, which they interviewed on March 26 and March 29. From that selection process, staff chose to recommend entering into an ENA with AMCAL Multi-Housing, Inc. of Agoura Hills.

AMCAL has experience in Fresno, opening the Sandstone apartments in Southwest Fresno just over a year ago and starting construction on the 50-unit Summer Hill Place project at San Benito and "B" Street in March, 2010.

**BACKGROUND**

Ventura and Seventh has the potential to become an exemplary model for the creative use of a mixed residential and commercial development in Southeast Fresno utilizing the site's full potential. A residential mixed use development containing high-density senior rental housing units is envisioned. The commercial street frontage portion of the site will enhance the appearance of Ventura Street by providing attractive commercial properties that serve the surrounding neighborhoods. The site is located between two established residential and commercial neighborhoods. The Ventura/Kings Canyon corridor has been identified by the City as a route for Bus Rapid Transit (BRT), a vital element in the region's transportation infrastructure connecting downtown to the outlying parts of the city.



AMCAL's conceptual proposal consists of between 60 to 90 units of senior affordable rental housing and commercial/retail. A conceptual plan was included with the RFQ response but the precise unit count and retail square footage shall be determined through the negotiation process and the City's entitlement process. It is anticipated that AMCAL will apply for 9% Low Income Housing Tax Credits to help finance the project, thereby ensuring that all of the units will be available to households at 60% of median income area median income (AMI) or below, with some at rents as low as 30% to 40% of AMI.

The City acquired its parcels using HOME Program funds, and would ensure affordability covenants on the HOME-assisted units as well. Further, the HOME Program funds assist with leveraging of the Agency's investment of Low- and Moderate- Income Housing Funds. This mixed use project adds to the City's and Agency's portfolio of developments and ongoing efforts to revitalize the neighborhood and builds upon previous revitalization endeavors in the immediate area. The agreement for the conveyance of the property to AMCAL is anticipated to be a combined Disposition & Development Agreement (DDA)/HOME Agreement between the three parties.

California Redevelopment Law (including Cal. H.&S.C. Sections 33334.2 and 33449), requires the Agency to set aside 20% of its tax increment for affordable housing for persons and families of low- to moderate-income, including making improvements upon, constructing, or improving structures in order to provide housing for persons of low- or moderate-income or by constructing related on-site and off-site improvements.

Separately, the Agency is undertaking the demolition of existing structures and clearance of the project site. The proposed development will help eliminate vacant, blighted parcels along the Ventura corridor. The design contained in AMCAL's conceptual plan creates a sense of place and community within the local neighborhood. The site is located within close proximity to numerous amenities which makes it an ideal location for a residential development.

The residential portion of the project could be gated, with the gates being open during the day for easy access of residents and services. The gates will be closed after business hours for added security and will be accessible only to residents by remote control or call box. In addition, access to El Monte Way (to the south) will be limited to an exit-only gate. This exit-only design will reduce the amount of traffic onto the existing residential street and neighborhood.

The project will not only address the need for affordable urban housing, but will also provide much needed social services and social interaction for its senior residents. A social service provider, selected by AMCAL, will offer a wide variety of programs and services to the residents. Programs will be offered based upon surveys of the residents in an effort to cater to the specific needs of the seniors. Finally, the project will house a professional on-site property manager trained in federal Section 42 and HOME Program regulations. Strong property management will enhance and foster the security, appearance and experience of the residents.



This project will be designed to offer the maximum comfort, security, convenience and livability to its senior residents.

### **Neighborhood Impact:**

The primary impact to the existing neighborhood will be the elimination of vacant, underutilized parcels of land. This project will also bring a new, vibrant focal point to the neighborhood. In addition, the project will insert more housing into the existing urban neighborhood to spur revitalization. This revitalization will help create a larger market for commercial and retail uses, thus creating more employment opportunities in the immediate area. The development will serve as an example of the vision of the 2025 General Plan Land Use of medium/high density residential living.

Per the terms of the ENA, the Developer will submit entitlement applications this year and submit an application for LIHTC in early 2011.

### **Implementation Plan**

The project is in the best interests of, and will materially contribute to, Redevelopment Plan implementation. The Project: (i) will have a positive influence in the Plan Area, and surrounding environs, (ii) is in the vital and best interests of Agency and the health, safety, and welfare of City residents, (iii) complies with applicable federal, state, and local laws and requirements, (iv) will help eliminate blight, (v) will improve and preserve the community's supply of low and moderate income housing available at affordable rent, as defined by Cal. H.&S.C. Sections 50052.5 and 50053, to persons and families of low or moderate income, as defined in Cal. H.&S.C. Section 50093 of Code; (vi) will be available to meet the replacement housing provisions in Cal. H.&S.C. Section 33413; (vii) will apply funds solely within the respective Plan areas except to the extent otherwise provided herein and allowed by Law; (viii) all planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of low and moderate income housing; (ix) will comply with all owner participation rules and criteria of Agency and the Plan; and (x) will comply with any and all applicable review and other requirements of the City's Historical Preservation Commission.

### **Project Timing**

The City, Agency and AMCAL shall negotiate the terms of a DDA/HOME Agreement during the entitlement phase of the project, and shall bring forward a DDA/HOME Agreement for approval at the end of the entitlement process, after the CEQA review and analysis of the project is complete. Under the terms of the DDA/HOME Agreement, AMCAL shall submit a 9% LIHTC application to the California Tax Credit Allocation Committee in early 2011.



**Housing and Community Development Commission**

At the regularly scheduled meeting of the Housing and Community Development Commission on April 14, 2010, the Commission unanimously recommended approval of this ENA.

**Attachments:**

1. Area Map
2. Draft Exclusive Negotiation Agreement

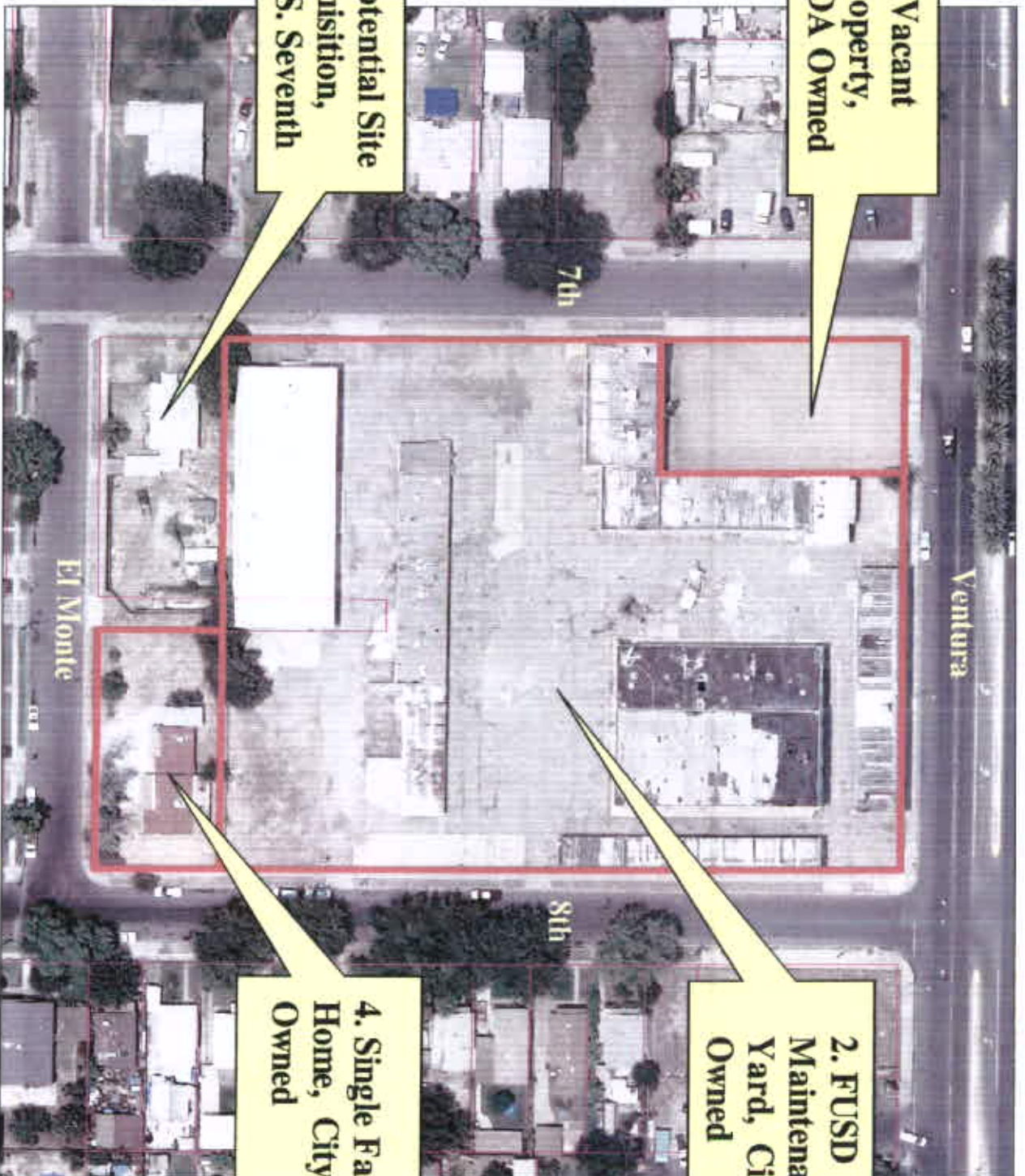


**1. Vacant  
Property,  
RDA Owned**

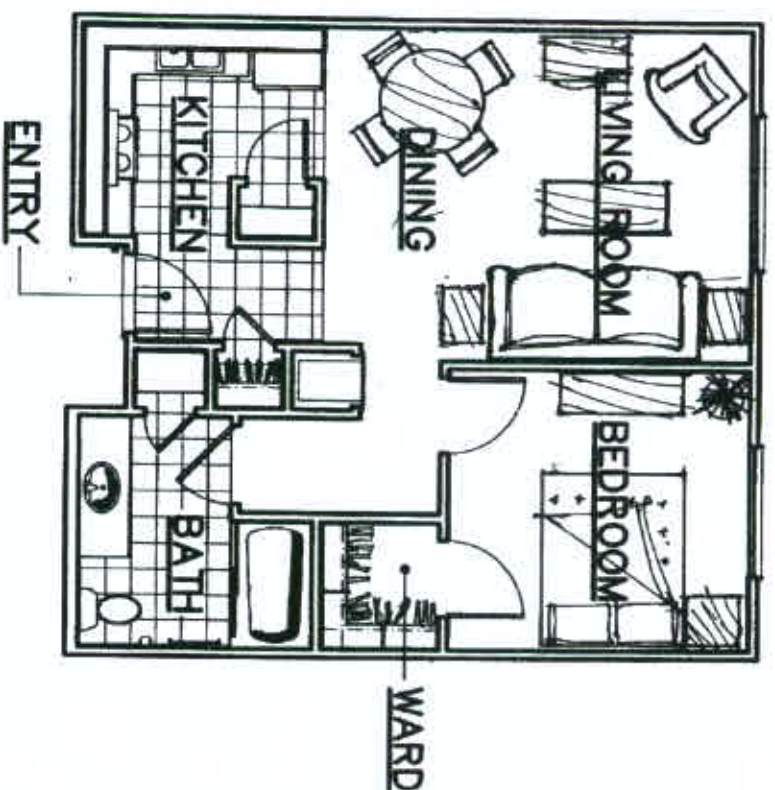
**2. FUSD  
Maintenance  
Yard, City  
Owned**

**3. Potential Site  
Acquisition,  
791 S. Seventh**

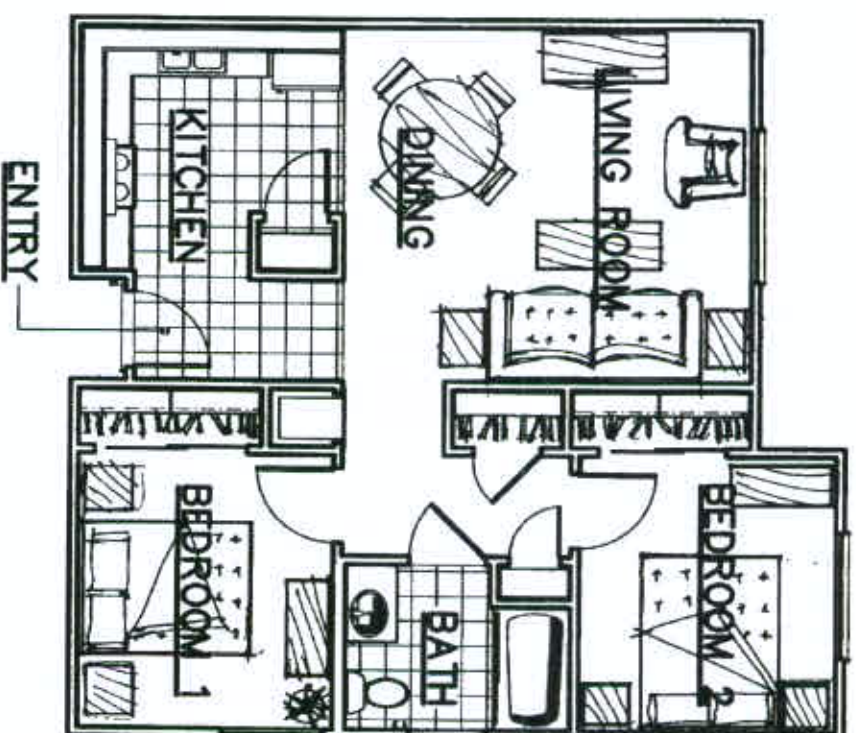
**4. Single Family  
Home, City  
Owned**







ONE BEDROOM



TWO BEDROOM

**UNIT FLOOR PLANS**

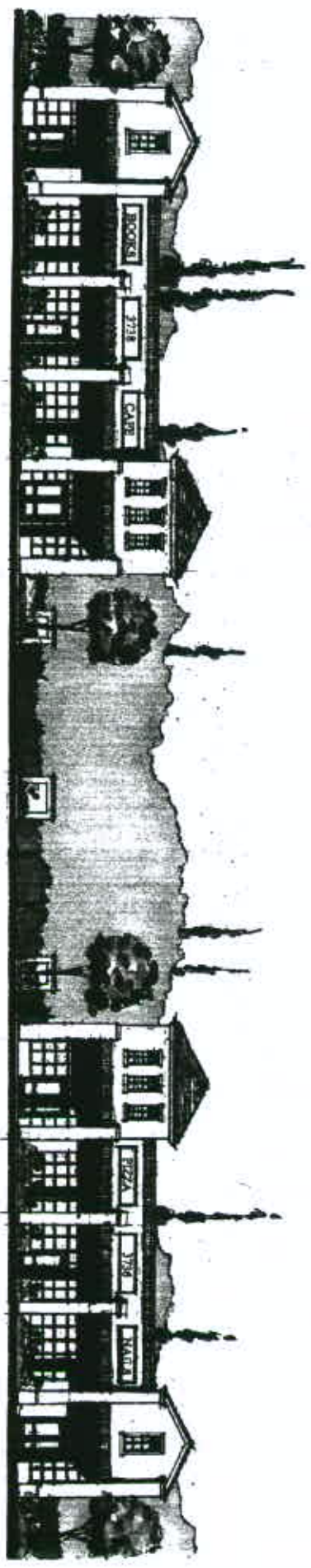
V E N T U R A   A N D   S E V E N T H   M I X E D   U S E   D E V E L O P M E N T  
F R E S N O ,   C A L I F O R N I A





7th STREET ELEVATION

60 UNIT ELEVATION



VENTURA BLVD ELEVATION

VENTURA AND SEVENTH MIXED USE DEVELOPMENT  
CALIFORNIA



# 7th STREET ELEVATION

VENTURA AND SEVENTH MIXED RESSENO, DEVELLOPMENTS



## STATISTICS

### SITE AREA

148,104 S.F.  
3.40 ACRES

### SITE COVERAGE

a. BUILDING AREA 36,285 S.F. (26.2%)  
b. PAVING 42,855 S.F. (32.9%)  
c. OPEN LANDSCAPE 68,964 S.F. (41.8%)

### PARKING

a. OPEN STALLS 79 STALLS  
b. ACCESSIBLE STALLS 6 STALLS  
c. COVERED STALLS 48 STALLS  
d. TOTAL STALLS 133 STALLS

### UNIT STATISTICS

a. UNIT TYPE 'A': 1 BR. 661 S.F. EACH  
b. UNIT TYPE 'B': 2 BR. 804 S.F. EACH  
c. COMMUNITY BLDG. 2,125 S.F.

### BUILDING STATISTICS

a. 7th STREET BUILDING  
1. TWO STORIES 28 UNITS  
2. THREE STORIES 42 UNITS  
b. 8th STREET BUILDING  
1. TWO STORIES 32 UNITS  
2. THREE STORIES 48 UNITS  
c. UNIT TOTALS  
1. TWO STORIES 60 UNITS  
2. THREE STORIES 90 UNITS



# PROPOSED SITE PLAN

VENTURA AND SEVENTH MIXED USE DEVELOPMENT  
CALIFORNIA